REMARKS

At the time of the Office Action dated February 10, 2006, claims 1-16 were pending and rejected in this application. Claim 1 has been amended by incorporating the limitations of claim 5 therein, and consequently claim 5 has been cancelled. Claim 10 has been amended by incorporating the limitations of claim 11 therein, and consequently claim 11 has been cancelled. Applicants submit that the present Amendment does not generate any new matter issue.

CLAIMS 1, 3-4, 6, 8, 10, 12-13, AND 15 ARE REJECTED UNDER 35 U.S.C. § 102 AS BEING ANTICIPATED BY MENON T AL., U.S. PATENT NO. 5,933,840 (HEREINAFTER MENON)

On pages 3-7 of the Office Action, the Examiner asserted that Menon discloses the claimed invention. This rejection is respectfully traversed.

Initially, Applicants note that independent claims 1 and 10 have been amended to respectively include the limitations recited in claims 5 and 11, which recite limitations that the Examiner admits is not identically disclosed by Menon.

The factual determination of anticipation under 35 U.S.C. § 102 requires the identical disclosure, either explicitly or inherently, of each element of a claimed invention in a single reference.[1] As part of this analysis, the Examiner must (a) identify the elements of the claims, (b) determine the meaning of the elements in light of the specification and prosecution history,

[1] In re Rijckaert, 9 F.3d 1531, 28 USPQ2d 1955 (Fed. Cir. 1993); Lindermann Maschinenfabrik GMBH v. American Hoist & Derrick Co., 730 F.2d 1452, 221 USPQ 481 (Fed. Cir. 1984).

and (c) identify corresponding elements disclosed in the allegedly anticipating reference.[2] This burden has not been met.

Independent claims 6 and 13 each recite the following limitation:

> resetting said aging value when said object instance is referenced by an executing process.

On page 6 of the Office Action, the Examiner asserted that this limitation is disclosed in column 12, lines 15-21 and 34-45 of Menon. Applicants respectfully disagree. As noted above, a rejection under 35 U.S.C. § 102 requires the identical disclosure of each element. Although the Examiner refers to teachings of "age-queue buckets" within Menon, these teachings do not identically disclose the above-identified limitation. Therefore, Menon fails to identically disclose the claimed invention, as recited in claims 6 and 13, within the meaning of 35 U.S.C. § 102.

Independent claims 6 and 13 further recite:

> incrementing said aging value during a garbage collection pass when said object instance had not been referenced by an executing process since a previous garbage collection pass.

On page 6 of the Office Action, the Examiner asserted that "Menon discloses an equivalent process." Whether or not Menon discloses an equivalent process is immaterial to a rejection under 35 U.S.C. § 102, which requires the identical disclosure of each element. A finding of equivalency does equate to a finding of anticipation. Moreover, a finding of equivalency is only

[2] Lindermann Maschinenfabrik GMBH v. American Hoist & Derrick Co., supra.

useful in obviousness rejections. In this regard, the Examiner is also referred to M.P.E.P. § 2144.06 and the paragraph entitled "ART RECOGNIZED EQUIVALENCE FOR THE SAME PURPOSE." Since the Examiner has failed to establish that Menon identically discloses the above-identified limitation, Menon further fails to identically disclose the claimed invention, as recited in claims 6 and 13, within the meaning of 35 U.S.C. § 102.

Therefore, for the reasons stated above, Applicants respectfully solicit withdrawal of the imposed rejection of claims 1, 3-4, 6, 8, 10, 12-13, and 15 under 35 U.S.C. § 102 for anticipation based upon Menon.

CLAIMS 2, 5, 9, 11, AND 16 ARE REJECTED UNDER 35 U.S.C. § 103 FOR OBVIOUSNESS BASED UPON MENON IN VIEW OF OZAWA ET AL., U.S. PATENT PUBLICATION NO. 2001/0023478 (HEREINAFTER OZAWA)

On pages 8-10 of the Office Action, the Examiner concluded that one having ordinary skill in the art would have been motivated to modify Menon in view of Ozawa to arrive at the claimed invention. This rejection is respectfully traversed.

Claims 5 (now incorporated into claim 1), 9, 11 (now incorporated into claim 10), and 16 are each directed to the concept that exempt classes of object instances will not be labeled and/or treated as loiterers. On page 9 of the Office Action, the Examiner referred to paragraph [0153] and asserted that "Ozawa discloses the concept of 'listing of exempt classes based upon which object instances are exempted from being labeled loiterers.'" Applicants respectfully disagree.

Ozawa does not teach exempt classes, given the ordinary meaning attributed to that term by one having ordinary skill in the art. The color fields taught by Ozawa do not describe exempt classes. Instead, the color fields are indication of a particular status of a cell. For example, paragraph [0147] of Ozawa teaches:

> A GC stack 135 stores a pointer pointing to a cell to be marked of all the cells in the mark phase process of a GC process. It is judged later without fail whether the cell pointed to by the pointer stored in this GC stack 135 should be marked. Such a cell is turned dark black in the on-the-fly GC or snapshot GC described earlier.

Since the cell can be "turned dark black in the on-the-fly GC" based upon whether the cell is judged to be marked, the color of the cells does not represent a "class" of object instances that are exempt.

The use of colors to mark a cell in a "mark and sweep type" garbage collection scheme is described in paragraphs [0014]-[0035] and Fig. 2 of Ozawa. As readily recognized by one having ordinary skill in the art, the use of colors to mark the cells, as taught by Ozawa, is not comparable to the claimed exempt classes. Therefore, even if Menon in view of Ozawa were combined in the manner suggested by the Examiner, the claimed invention would not result. Applicants, therefore, respectfully submit that a rejection of claims 1-2, 9-10, and 16 under 35 U.S.C. § 103 for obviousness based upon Menon in view of Ozawa would not be viable.

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CLAIMS 7 AND 14 ARE REJECTED UNDER 35 U.S.C. § 103 FOR OBVIOUSNESS BASED UPON MENON IN VIEW OF CHAKRABORTY ET AL., U.S. PATENT PUBLICATION NO. 2002/01658760 (HEREINAFTER CHAKRABORTY)

On pages 10 and 11 of the Office Action, the Examiner concluded that one having ordinary skill in the art would have been motivated to modify Menon in view of Chakraborty to arrive at the claimed invention. This rejection is respectfully traversed.

Claims 7 and 14 respectively depend from independent claims 6 and 13, and Applicants incorporates herein the arguments previously advanced in traversing the imposed rejection of claims 6 and 13 under 35 U.S.C. § 102 for anticipation based upon Menon. The Examiner's secondary reference of Chakraborty does not cure the argued deficiencies of Menon. Accordingly, the claimed invention would not result from the combination of Menon and Chakraborty. Applicants, therefore, respectfully submit that the imposed rejection of claims 7 and 14 under 35 U.S.C. § 103 for obviousness based upon Menon in view of Chakraborty is not viable and, hence, solicit withdrawal thereof.

Applicants have made every effort to present claims which distinguish over the prior art, and it is believed that all claims are in condition for allowance. However, Applicants invite the Examiner to call the undersigned if it is believed that a telephonic interview would expedite the prosecution of the application to an allowance. Accordingly, and in view of the foregoing remarks, Applicants hereby respectfully request reconsideration and prompt allowance of the pending claims.

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Although Applicants believe that all claims are in condition for allowance, the Examiner is directed to the following statement found in M.P.E.P. § 706(II):

> When an application discloses patentable subject matter and it is apparent from the claims and the applicant's arguments that the claims are intended to be directed to such patentable subject matter, but the claims in their present form cannot be allowed because of defects in form or omission of a limitation, the examiner should not stop with a bare objection or rejection of the claims. The examiner's action should be constructive in nature and when possible should offer a definite suggestion for correction.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 09-0461, and please credit any excess fees to such deposit account.

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